

**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**I.T.A. No. 449/VIZ/2019  
(Asst. Year : 2012-13)**

ITO, Ward-1(2),  
Visakhapatnam.

Vs. Sharief Azizulla,  
D.No. 9-34-9/1, Plot No.168,  
Opp. Lane to Kalabarathi,  
Pithapuram Colony,  
Maddilapalem,  
Visakhapatnam.

(Appellant)

PAN No. ACFPA 6876 P  
(Respondent)

**C.O.No. 154/VIZ/2019  
(Arising out I.T.A. No. 449/VIZ/2019)  
(Asst. Year : 2012-13)**

Sharief Azizulla,  
D.No. 9-34-9/1, Plot No.168,  
Opp. Lane to Kalabarathi,  
Pithapuram Colony,  
Maddilapalem,  
Visakhapatnam.

Vs. ITO, Ward-1(2),  
Visakhapatnam.

PAN No. ACFPA 6876 P  
(Appellant)

(Respondent)

Assessee by : Shri G.V.N. Hari, Advocate.  
Department by : Shri N. Gopi Krishan, Sr. DR

Date of hearing : 21/04/2021.  
Date of pronouncement : 13/05/2021.

**ORDER****PER N.K. CHOUDHRY, JUDICIAL MEMBER**

The instant appeal has been preferred by the Revenue Department, whereas the cross objection by the Assessee against the order dated 15/03/2019 impugned herein passed by the Id. Commissioner of Income Tax (Appeals)-1 [for short, "Id. Commissioner"], Visakhapatnam u/sec. 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") for the A.Y. 2012-13.

**2.** At the outset we observe that there is delay of 33 days in filing the appeal. The Revenue Department has filed an application for condonation of delay and narrated the facts that the Pr.CIT-1, Visakhapatnam is holding additional charge of Pr.CIT -2, Visakhapatnam and Pr.CIT, Rajahmundry. Further, due to his daughter's marriage held in the month of May, 2019 there was little delay in issuing authorization and filing appeal before the ITAT. The delay has been occurred due to unforeseen circumstances beyond the control of the Revenue Department. It is further contended that there are good grounds for consideration in the appeal and there is a necessity to condone the delay, as otherwise the Revenue Department will be put to irreparable loss and severe hardship in case the delay of 33 days in filing the appeal has not been condoned.

**3.** Ld.AR did not refute the claim of the Revenue Department.

**4.** Having considered the contentions and submissions of the Revenue Department to the effect that Pr.CIT-1, Visakhapatnam is also holding the charge of two divisions and due to his daughter's marriage in the month of May, 2019, the delay in issuing authorization occurred which resulted into delay of 33 days in filing the instant appeal. Having considered the delay is meagre and the reasons seems to be sufficient, plausible and bonafide and cannot be termed as dishonest, as no fruitful purpose could be served in delaying the filing of the appeal, we deem it appropriate to condone the delay. Consequently, delay stands condoned and the appeal is admitted for hearing.

**5.** Now coming to the merits of the case. Having heard the parties and perused the material available on record. Facts are already illustrated/narrated by the Id. Commissioner in its order, hence, for the sake of brevity not being repeated herein.

**5.1.** The Revenue Department has raised the following grounds of appeal:-

- "1. The Order of the Ld. CIT(A)- 1, Visakhapatnam is erroneous in law.*
- 2. The Ld.CIT(A)-1, erred in deleting the addition of Rs.46,60,000/ made towards unexplained cash deposits in HDFC Bank as the assessee failed to substantiate with any supporting evidence that the cash deposits represent interior work receipts of the year.*
- 3. The Ld.CIT(A), erred in deleting the addition of Rs.49,84,800/- on the basis of mere cash flow statement filed by the assessee without appreciating that there was no nexus between the date (s) of cash withdrawals and cash deposits ill the bank account.*

4. *Ld.CIT(A) erred in deleting the addition of Rs.20,00,000/- representing unsubstantiated gifts Without appreciating that in the case of Sri Ayesha Zareen, as per the Balance Sheet as on 31.03.2012, assessee is appearing as 'debtor' in the books of alleged donor and in case of the alleged gift in the case of Snit. Alia Begum, she had no source to make gift Rs. 10,00,000/- and except the alleged gift transaction, the assessee's balances in her bank account are running in thousands of rupees only.*
5. *The ld.CIT(A) is not justified in deleting the addition of Rs.48,0,217/- made towards unsubstantiated expenditure on the ground that the assessee admitted his income u/s.44AD of the Act, ignoring and not appreciating that these provisions are not applicable to assessee's case as the gross receipts of the assessee being Rs.1,00,44,218/ - which exceeded the threshold limit of Rs. Sixty Lakhs.*
6. *The appellant craves leave to add or amend or alter or substitute any ground at the time of hearing of the appeal.*
7. *For these and other grounds that may be urged at the time of appeal hearing, the appellant prays that the addition made by the Assessing Officer in the aforesaid issues be restored.”*

**5.2.** We will decide the appeal under consideration, grounds-wise.

**6. Ground Nos. 1, 6 & 7** are formal in nature, hence, needs no separate adjudication.

**7. Ground No.2** relates to the addition of Rs. 46,60,000/- made by the AO, towards unexplained cash deposits in HDFC Bank by the Assessee . The AO made the said addition on the following reasons:-

- “a) *That the bank account is undisclosed to department and it was detected by the department.*

- b) *The work receipts so stated, to have been received from certain persons, were never substantiated. Vide your statement to Q.No.7, 9 and 10 recorded from the assessee on 10-03-2015, he has categorically stated that he has no evidence to establish that they are indeed work receipts.*
- c) *During the course of survey at all of the premises belonging to the assessee, no single piece of evidence was available to sustain your plea.*
- d) *Your plea that unaccounted expenditure should be given credit, as per case laws, is not acceptable in absence of any possible evidences.*
- e) *That, in the FY: 2010-11 also similar cash deposits were found in the said undisclosed bank account where the departmental enquiries conducted at Bellary that the confirmation letters are baseless. Moreover they were found prepared in your business premises which were unsigned and impounded. You have also stated vide your statement dt.10-03-2015 that you don't know the reason why the persons who gave confirmations stated against your claim.*
- f) *The assessee could never controvert the findings made by the department as to the unexplainable sources for the cash deposits, either in the preceding AY: 2011-12 or the present AY: 2012-13 with any verifiable evidences.”*

**7.1** On challenge before the Id. Commissioner, the said addition was deleted by the Id. Commissioner by holding as under:-

6.2) *Ground No.2 to 5: Cash deposits in account with HDFC Bank, Bellary: The assessing officer made addition of Rs.46,60,000 towards unexplained deposits in the HDFC Bank, Bellary. The assessing officer rejected the contention of the appellant that the deposits in the bank account represented business turnover of the appellant. Among other things, the assessing officer took support from the fact that deposits in the said bank account for A.Y.2011-12 were enquired into on the basis of confirmation letters submitted by the appellant and the contents of the confirmation letters were denied by the persons to whom the appellant claimed to have*

*rendered services. The appellant on the contrary submitted that the addition made for A.Y.2011-12 stood deleted by the Hon'ble ITAT, Visakhapatnam Bench. Further, the appellant submitted that his only business is that of Interior Decors and he has no other source. I have carefully perused the assessment order, submissions of the appellant and the order of ITAT, Visakhapatnam. The issue before the ITAT, Visakhapatnam for A.Y.2011-12 was the addition towards unexplained deposits in the very same bank account of the appellant with HDFC, Bellary. The Hon'ble ITAT held as under in their order dt.20.09.2017 in ITA No.399/Viz/2015:*

*"We have gone through the bank account which was filed along with paper book. In the bank account, the amounts were deposited in Bellary and subsequently withdrawn. The operation in the account appears that the transactions are related to the business but not the investments. Therefore, we are of the opinion that the deposits made in the bank account are related to the business of the assessee and only the profit should be taxed in the hands of the assessee. However, the bank account is an undisclosed asset outstanding at the end of the year should be taxed as undisclosed asset after giving due credit or opening balance if any. Accordingly, we dire the A.O. to tax the profit on the amount of Rs.25,95,276 @8% and the closing balance in the bank account. Accordingly, we set aside the order of the lower authorities and partly allow the appeal of the assessee."*

*There is no change in the facts of the case. For the impugned assessment year also the bank account was operated in the same manner. Therefore, respectfully following the decision of the jurisdictional tribunal I direct the assessing officer to estimate profit @8% on the total deposits of Rs.46,60,000. At the same time, I found from the return of income filed in response to notice u/s 148 that the appellant has already increased the turnover by the amount of Rs.46,60,000 (Rs.1,00,44,218-Rs.53,84,218) and admitted profit*

*@8%. Also, it is noticed that the bank account was closed in February, 2012 and the closing balance is Rs. Nil. Hence, no further addition is required. Therefore, the assessing officer is directed to delete the entire addition of Rs.46,60,000. Grounds of appeal no.(2) to are allowed. Consequently Ground No.(4) and (5) are dismissed as infructuous.”*

**7.2** We may observe that the Assessee is doing only business of interior decors as claimed before the Revenue Department by the Assessee and the similar addition to the tune of Rs. 25,95,276/- was also made by the AO on identical facts as unexplained deposits in the HDFC bank, Bellary for the A.Y. 2011-12. The ITAT vide its order dated 20/09/2017 in ITA No.399/VIZ/2015 directed the AO to tax the profit @8% on the amount of Rs. 25,95,276/- and the closing balance in the bank account. The Id. Commissioner basing the decision of Hon'ble Co-ordinate Bench, directed the AO to estimate the profit @8% on the total deposit of Rs. 46,60,000/-, however at the conclusion while realising from the return of income filed by the Assessee in response to the notice u/sec. 148, held that as the Assessee has already increased turnover by adding the amount of Rs. 46,60,000/- and admitted the profit @8%, therefore no further addition is required and consequently directed to delete the entire addition of Rs. 46,60,000/-.

We may observe that the Id. Commissioner thoroughly considered the contentions of the department and the Assessee and deleted the addition in hand, while respectfully following the

dictum of the Co-ordinate bench of the ITAT qua identical issue for the A.Y. 2011-12 and considering the peculiar facts and circumstances. Neither any material is available on record nor brought to our notice by the Revenue Department to controvert the finding of the Id. Commissioner, consequently, ground No.2 stands dismissed.

**8.** Ground No.3 relates to the deletion of addition of Rs. 49,84,800/- on the basis of mere cash flow statement filed by the Assessee. Before the AO it was submitted by the Assessee that the said deposits are work receipts and also cash withdrawals, rental income at Rs.2,40,000/- and agricultural income at Rs.15,000/-. Further, it was also claimed by the Assessee that the cash deposits and withdrawals are accounted , however, the AO did not accept the claim of the Assessee and made the addition by observing as under:

*That the Assessee did not produce any verifiable new evidence to substantiate the cash deposits in the bank account.*

*a) Merely making entries in the books of accounts, without source documents and actual evidences does not mean that they can be, per se, acceptable.*

*b) Survey, has been conducted, findings confronted with the Assessee and the Assessee was given ample opportunities to furnish evidences but he failed to do so.*

*c) The work receipts so stated, to have been received from certain persons, were never substantiated.*

*d) Assessee, did not, in any manner, prove the nexus between the cash withdrawals and cash deposits.*

e) As per the provision of Sec.44AA(1) of the Income Tax Act, the Assessee claimed as "interior decorator", it is mandatory for him and he shall keep and maintain books of accounts and other documents. The Assessee did not follow this”.

**8.1.** The said addition was also challenged before the Id. Commissioner, who deleted the same by holding as under:-

“6.3) Ground No.6 : Cash deposits of Rs.52,39,300: The assessing officer made the addition by rejecting the claim of the appellant that the cash with drawn was re-deposited in the bank account. I have carefully perused the assessment order, bank statements and the daily cash flow statement submitted by the appellant. The business premises of the appellant were subjected to survey and whatever incriminating material was impounded. There were no unaccounted investments or expenses found at the time of survey. The appellant submitted cash flow statement and furnished the details of all the receipts and expenses for the year. No specific defect was pointed out by the assessing officer. The assessing officer assumed that the amount drawn in small amounts cannot be considered as available for redeposit. There is no cogent material for this view taken by the assessing officer. On a careful perusal of the cash flow statement I found that the appellant had cash balance in hand for every deposit made. Further, the other payments shown in the cash flow statement are also found to be from the cash balance available to the appellant. Therefore, the assessing officer is directed delete the addition of Rs.49,84,800 made by the assessing officer. The appellant submitted that in the ground of appeal the addition was wrongly mentioned as Rs. 52,39,300/- and the same may be read as Rs. 49,84,800/-. Since, I have directed the AO to delete the addition of Rs. 49,84,800/-, this ground of appeal is allowed.”

**8.2** We may observe that the Id. Commissioner has held to the effects that at the time of survey of the business premises of the Assessee, no unaccounted investment or expenses were found and the Assessee submitted cash flow statement and also furnished all the details and receipts for the year under consideration and even otherwise, no specific defect was pointed out by the AO. The AO assumed that the amount drawn in small amounts cannot be considered as available for redeposit, however, no such cogent material to substantiate the same.

The Id. Commissioner also observed that on a careful perusal of the cash flow statement, he found that the Assessee had cash balance in hand for every deposit made. Further, the other payments shown in the cash flow statement are also found to be from the cash balance available to the Assessee.

We may observe that Revenue Department failed to contradict the finding of the Id. Commissioner for the issue in hand, hence the same does not require any interference. Consequently, the ground No.3 stands dismissed.

**9. Coming to the next ground No.4** which relates to the deletion of addition of Rs. 20,00,000/- representing unsubstantiated gifts.

This is clear from the record that both the donors from whom the Assessee has taken the loan are close relatives and money has been routed through banking channel and both the donors have

disclosed the transactions in their financial statements and before the AO, filed the confirmation letters and also substantiated through their returns of income for the assessment year under consideration and resultantly the Assessee has prima-facie discharged his onus as held by the Id. Commissioner.

With regard to contention qua the creditworthiness of the donors, the Assessee is required to discharge its onus prima facie on the basis of probability only, which in the instant case correctly been discharged by the Assessee, hence, we are unable to find out any reason and/or material to controvert the finding of the Id. Commissioner. Consequently, ground No.4 also stands dismissed.

**10.** Coming to the ground No.5 which relates to the deletion of addition of Rs. 48,20,217/- made towards unsubstantiated expenditure by the AO. Before the AO it was contended by the Assessee that the material purchase bills are available for recent times, but credit should be given to earlier years also. He is not a professional architect and hence provisions of section 44AA are not applicable and he is not required to maintain books of accounts etc. The Assessee admitted the income as per section 44AD of the Act. The AO did not accept the Assessee's contentions and made the addition of Rs. 48,20,217/- on the following reasons:-

- "a) *There is no distinction between professional architect and non-professional architect in the Act. As long as the assessee claims that he is an interior decorator, he has to keep and maintain documents and books as per Sec.44AA(1) , which he failed to do so. The relevant portion of the provision is reproduced below:*

*"44AA(1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the Assessing officer to compute his, total income in accordance with the provision of this Act.*

- b) Material purchase later bills are not proof for purchase of material for earlier period.*
- c) Regarding salary payments, the assessee stated that they are reflected in personal books.*
- d) Assessee is strongly relying on Sec.44AD stating that the expenses u/s 30 to 38 are deemed to be allowed. However, claiming u/s 44AD does not automatically mean that the department has agreed for presumptive taxation.*
- e) As the income is not established as business income at all, the provisions of sec. 44AD are not applicable.*

*Hence, the expenditure claimed at Rs. 48,20,217/-, which is not genuine, is hereby disallowed and added back to total income."*

**10.1** The said addition also came into consideration before the Id. Commissioner who directed the AO to delete the same, by holding as under:-

*"6.5) Ground No.8 & 9: Assessment of business of income: The assessing officer examined the profit and loss account of the appellant and disallowed expenditure to the extent of Rs.48,20,217. The assessing officer observed that the appellant failed to establish that the source of income is business income and therefore declined to compute the income u/s 44AD of the Act. I have carefully perused the profit and loss account, assessment order and the submissions of the appellant. On a perusal of the*

*computation and the profit and loss account, it is noticed that the appellant admitted income from business of interior decors @8% of the turnover. As the appellant has opted for the provisions of S.44AD, there is no necessity to submit the profit and loss account. However, the appellant submitted a profit and loss account by arriving at the profit exactly @8% of the turnover. The appellant did not maintain regular books of account and has chosen to admit the income as per the provisions of S.44AD of the Act. Therefore, the profit and loss account submitted cannot be taken into consideration and the appellant cannot be asked to substantiate the expenditure shown in the profit and loss account. The assessing officer is not justified in observing that the appellant failed to show the source as business income. The assessing officer himself allowed certain expenses like Advertisement, travelling expenses, office rent, telephone expenses etc. Further, the assessing officer assessed the income admitted by the appellant under the head profits and gains of business only. Once, the appellant has chosen to admit the income in terms of S.44AD of the Act the profit has to be assessed as per the percentage stipulated in the said section. The assessing officer cannot resort to item wise disallowance of the expenses. In any case, the Hon'ble ITAT, Visakhapatnam Bench held that profit of 8% is reasonable in respect of business turnover of the appellant. Therefore, looking at the issue in any manner the assessing officer is not justified in disallowing the expenditure. The assessing officer is directed to delete the addition of Rs.48,20,217.”*

**10.2** We may observe that the Id. Commissioner thoroughly perused the computation and the profit & loss account of the Assessee wherein the Assessee had admitted income from business of interior decors @8% of the turnover and the Id.

Commissioner further observed that as the Assessee has opted for the provisions of section 44AD, there is no necessity to submit the profit and loss account. Further, it was observed by the Id. Commissioner that the AO himself has allowed certain expenses like advertisement, travelling expenses, office rent and telephone expenses etc., therefore is not justified in observing that the Assessee failed to show the source as business income. The Id. Commissioner further held that once the Assessee has chosen to admit the income in terms of section 44AD, the profit has to be assessed as per the percentage stipulated in the said section and the AO cannot resort to item wise disallowance of the expenses. The Id. Commissioner while deleting the addition also observed that the Hon'ble ITAT, Visakhapatnam bench held that profit of 8% is reasonable in respect of business turnover of the Assessee. Therefore, looking at the issue in any manner the AO is not justified in disallowing the expenditure.

Nothing contrary has been brought by the Revenue Department and even we have also failed to find out any material to controvert the decision of the Id. Commissioner for the issue in hand, consequently, no interference is necessitated. Thus the ground No.5 also stands dismissed.

**11.** There is delay of 64 days in filling of the Cross Objection by the Assessee and therefore is barred by limitation. The Assessee neither filed any application for condition of delay nor pleaded and/or contended before this Bench for the same, hence, CO filed by the Assessee stands dismissed in *limine*.

**12.** In the result, appeal filed by the Revenue Department and the cross objection filed by the Assessee stands dismissed.

Order Pronounced in open Court on this 13<sup>th</sup> day of May, 2021.

Sd/-  
**(D.S. SUNDER SINGH)**  
**Accountant Member**

sd/-  
**(N.K. CHOUDHRY)**  
**Judicial Member**

**Dated: 13<sup>th</sup> May, 2021.**

**vr/-**

*Copy to:*

1. *The Assessee - Sharief Azizulla, D.No. 9-34-9/1, Plot No.168, Opp. Lane to Kalabarathi, Pithapuram Colony, Maddilapalem, Visakhapatnam.*
2. *The Revenue - ITO, Ward-1(2), Visakhapatnam.*
3. *The CIT-1, Visakhapatnam.*
4. *The CIT(A)-1, Visakhapatnam.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)  
Sr. Private Secretary,  
ITAT, Visakhapatnam.

